

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jodi Lynn Kern,

Plaintiff,

v.

State Farm Mutual Automobile Insurance
Company,

Defendant.

Case No.: 2:14-cv-1741-JAD-CWH

**Order Granting Plaintiff's Motion
to Remand [Doc. 8]**

This insurance coverage action is subject to plaintiff Jodi Lynn Kern's motion to remand. Doc. 8. Defendant State Farm, who removed this case based on diversity of citizenship, offers a series of speculative assertions why Kern's requests for general, special, and punitive damages, plus attorney's fees, meet the \$75,000 amount-in-controversy. Doc. 14. I conclude that State Farm has not carried its burden to show by preponderance of the evidence that the jurisdictional threshold will more likely than not be met. Accordingly, grant Kern's motion and remand this case back to the Eighth Judicial District Court.

Background

On September 25, 2014, Plaintiff Jodi Lynn Kern sued Defendant State Farm Mutual Automobile Insurance Company in Nevada State Court. Doc. 1-1 at 2-7. Kern alleges that on February 17, 2014, through no fault of her own, she sustained personal injuries in an automobile accident, for which she recovered the \$15,000 from the tortfeasor's insurer. *Id.* at 6. She then made a policy-limits demand on her own underinsured policy with State Farm, which was denied. *Id.* at 5-6.

Although Kern's complaint does not contain any discrete causes of action, she makes out allegations for breach of contract, unfair claims practices, breach of the implied covenant of good faith and fair dealing, and bad faith. *Id.* at 6. Kern also does not allege specific damages amounts for any of her counts; in her prayer for relief she requests, *inter alia*,

1 general damage in excess of \$10,000; special damages according to the proof at trial;
2 punitive damages in an amount in excess of \$10,000; and attorney fees and costs. *Id.* at 6-7.

3 On October 21, 2014, State Farm removed this case to federal court under 28 U.S.C. §
4 1441(b). Doc. 1 at 1. State Farm contends that removal was proper based on diversity of
5 citizenship because the parties are from different states and the amount in controversy
6 exceeds \$75,000. *Id.* at 2. State Farm contends that while the policy limitations provided
7 Kern a maximum recovery of \$15,000, she pleads extra-contractual claims for punitive
8 damages and attorney fees, which raise Kern's theoretical amount of recovery above the
9 \$75,000 threshold. *Id.* Kern moves to remand her case back to the Nevada state court, Doc.
10 8; State Farm opposes that motion. Doc. 14. I find that State Farm has failed to demonstrate
11 that Kern's case value satisfies the \$75,000 jurisdictional threshold, grant her motion, and
12 remand this case back to state court.¹

13 Discussion

14 U.S.C. § 1441(b) allows removal to federal court based on diversity of citizenship.
15 Under 28 U.S.C. § 1332(a)(1), "[t]he district courts shall have original jurisdiction of all civil
16 actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of
17 interest and costs, and is between citizens of different states." If the court finds that the
18 amount-in-controversy requirement is not met, it should remand the case to state court under
19 28 U.S.C. § 1447(c).

20 Federal courts are courts of limited jurisdiction."² There is a strong presumption
21 against removal jurisdiction and "federal jurisdiction must be rejected if there is any doubt as
22 to the right of removal in the first instance."³ Therefore the defendant always has the burden
23 of establishing that removal is proper.⁴ This burden is usually satisfied if the plaintiff claims
24

25 ¹ I find this matter suitable for disposition without oral argument. Nev. L.R. 78-2.

26 ² *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).

27 ³ *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992).

28 ⁴ *Id.*

a sum more than the threshold requirement.⁵ If the amount of plaintiff's claim is unclear, the defendant must prove that it is more likely than not that the jurisdictional amount has been met.⁶ Defendants may rely upon facts presented in the removal petition and any summary judgement type evidence that is related to the amount-in-controversy.⁷ Conclusory allegations do not overcome the presumption against removal jurisdiction or satisfy the defendant's burden,⁸ but the defendant does not need to predict the trier of fact's eventual award with certainty, either.⁹ Where the claims added together show by a preponderance of the evidence the threshold amount is met, the amount in controversy is sufficient to establish jurisdiction.¹⁰ The Ninth Circuit, interpreting Nevada Rule of Civil Procedure 8(a), has added the total of any claims "in excess of \$10,000" when assessing whether the amount-in-controversy requirement has been satisfied.¹¹

A. State Farm has not demonstrated that Kern's general and special damages will meet the jurisdictional threshold.

Kern argues that evaluation of State Farm's petition for removal makes it "abundantly clear that [State Farm] has failed to overcome the strong presumption against removal." *Id.* at 5. Although not addressing every cause of action she brings in her complaint, she points to her current \$21,186.12 balance for medical specials—well below the \$75,000 threshold. Doc. 8 at 3. Kern also argues that on October 21, 2014, she sent a letter to State Farm that "will . . . confirm [her] request to file a Stipulation and Order to Remand this case back to State Court so that it can be arbitrated," and that "Pursuant to the Stipulation, Plaintiff agrees that her total claimed recoverable damages against Defendant in this action does not, and will

⁵ *Id.* (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938)).

⁶ *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 395, 404 (9th Cir. 1996).

⁷ *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

⁸ *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (citations omitted).

⁹ *Id.*

¹⁰ *Matheson*, 319 F.3d at 1091.

¹¹ *Id.*

1 not exceed the sum of \$75,000.” *Id.* at 3. On its face, plaintiff’s stipulated amount applied
2 only to contractual claims and attorney’s fees, but not any potential tort recovery. *See id.*¹²

3 In response, State Farm argues that Kern “seeks contractual damages up to the amount
4 of the UIM policy \$50,000 per accident,” Doc. 14 at 2, but does not deny that Kern’s current
5 medical specials total only \$21,186.12 only. State Farm also points to Kern’s request for
6 “general damages to compensate for the impact the accident allegedly had on [her] life,” and
7 since “general damage awards sometimes equal many multiples of the incurred special
8 damages,” it is possible that Kern “will seek \$50,000 - \$75,000 in general damages alone.”
9 *Id.* at 5. However, at this time Kern’s damage requests in the complaint—which seeks only
10 one award of general damages in excess of \$10,000—raise State Farm’s current potential
11 liability to some amount over \$31,186.12. *See* Doc. 1-1 at 6.¹³ State Farm offers no
12 additional specific information or authority suggesting how these two amounts will augment
13 the amount-in-controversy. Thus, State Farm fails to meet its burden to show by a
14 preponderance of evidence that Kern’s general and special damages will more likely than not
15 exceed the threshold amount.

16 **B. State Farm provides no evidence of punitive damages awards in similar cases.**

17 To augment these insufficient sums, State Farm argues that Kern’s request for
18 punitive damages—currently also alleged as some amount in excess of \$10,000—satisfies the
19 jurisdictional amount because under Nevada law the potential for an award of punitive
20 damages in this case could be “far in excess” of \$75,000. *Id.* at 6. “Punitive damages are
21 part of the amount in controversy in a civil action,”¹⁴ and a district court may consider
22 punitive damages in determining the amount in controversy when punitive damages are
23 available as a matter of state law.¹⁵ In Nevada, a defendant is liable for punitive damages if

24
25 ¹² Although Kern states that this documentation is attached to her motion to remand, it does not appear
to have been properly attached.

26 ¹³ *See Matheson*, 319 F.3d at 1091.

27 ¹⁴ *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001).

28 ¹⁵ *Davenport v. Mut. Benefit Health & Accident Ass’n*, 325 F.2d 785, 787 (9th Cir. 1963).

1 the defendant demonstrates a “[c]onscious disregard’ of a person’s rights and safety when he
 2 or she knows of ‘the probable harmful consequences of a wrongful act and a willful and
 3 deliberate failure to act to avoid those consequences.’”¹⁶ But Kern’s complaint does not
 4 actually allege that State Farm’s denial of her claim was made with conscious disregard for
 5 State Farm’s rights. Instead, she alleges merely that State Farm acted in “bad faith.” Doc. 1-
 6 1 at 6.

7 Even assuming *arguendo* that an adequate prayer for punitive damages has been pled,
 8 State Farm has not made any colorable effort to show what amount Kern might recover.
 9 NRS § 42.005(b) permits the court to award punitive damages not to exceed “[t]hree hundred
 10 thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than
 11 \$100,000.” But the removing defendant “must do more than merely point to Plaintiff’s
 12 requests for damages . . . upon removal it must . . . provide evidence that would permit a
 13 reasoned calculation of damages.”¹⁷ For example, the defendant may introduce evidence of
 14 jury verdicts in analogous cases.¹⁸ State Farm offers virtually no authority that Kern’s case is
 15 similar to any case in which punitive damages have been awarded. Instead, it points only to
 16 Kern’s bare punitive damage request and the Nevada’s authorizing statute. These
 17 speculations fail to demonstrate by a preponderance of the evidence that the amount in
 18 controversy more likely than not exceeds the \$75,000 threshold in this case.

19 **C. State Farm’s attorney fee arguments are insufficient.**

20 Finally, State Farm turns to Kern’s request for attorney’s fees, which it speculates
 21 could “total tens of thousands of dollars in a contested bad faith case.” Doc. 14 at 6. While
 22
 23

24 ¹⁶ *Wyeth v. Rowatt*, 244 P.3d 765, 783 (Nev. 2010) (quoting NRS § 42.005(1)).

25 ¹⁷ *Warkmeister v. Time Warner Inc.*, 2007 WL 201158, at *2 (D. Nev. Jan. 23, 2007); *see also Surber v.*
 26 *Reliance National Indemnity Co.*, 110 F. Supp. 2d 1227 (N.D. Cal. 2000) (“In the absence of any evidence
 regarding punitive damages, the Court concludes that defendant has failed to meet its burden.”).

27 ¹⁸ *See Casas v. Geico Indem. Co.*, 2013 WL 6284152, at *3 (D. Nev. Dec. 4, 2013); *Arias v. Am. Family*
 28 *Mut. Ins. Co.*, 2013 WL 6207749, at *2 (D. Nev. Nov. 27, 2013); *McCaa v. Massachusetts Mutual Life Insurance*
Co., 330 F. Supp. 2d 1143, 1149 (D. Nev. 2004).

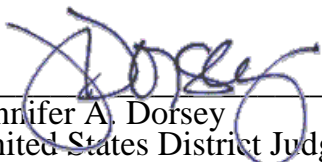
1 attorney fees may be used to compute the jurisdictional amount,¹⁹ I find State Farm's
2 speculative assertions unpersuasive, especially considering how far State Farm is from being
3 able to satisfy the amount-in-controversy with Kern's other allegations.

4 **Conclusion**

5 Accordingly, based upon the foregoing reasons and with good cause appearing and no
6 reason for delay,

7 It is **HEREBY ORDERED** that Kern's Motion to Remand [Doc. 8] is **GRANTED**.
8 This case is hereby remanded back to the Eighth Judicial District Court, Case No. A-14-
9 707531-C, and the clerk is instructed to close this case.

10 DATED: December 10, 2014.

11 
12 _____
13 Jennifer A. Dorsey
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27

28 ¹⁹ *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).